

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

FILED

APR 21 2008

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U.S. DISTRICT COURT
DISTRICT OF DELAWARE

GLEN W. DUCOTE,

Petitioner,

v.

Civ. A. No. 07-374-GMS

PERRY PHELPS, WARDEN;

JOSEPH R. BIDEN III Attorney

General for State of Delaware

Respondants.

MOTION TO AMEND PETITION TO ADD GROUND 8 AND 9.

Petitioner moves this Court pursuant to Habeas Rules 5 and 11 of F.R.C.P. Rules 11 and 15(a) and (c), to permit him to amend his previous filed Habeas Corpus Petition to add clarification and amplification to Petitioner's Petition Ground 5 and 6 claims of Ineffective Assistance of Counsel. See: United States v Thomas 221 F.3d 430 (3rd Cir. 2000); Stevens v. Del. Corr. Ctr. 295 F.3d 366, 370 (3rd Cir. 2002) (Claims clarified in Federal Court related to facts submitted in state courts) This Amendment seeks to amplify or clarify the central issue of the Petition and related back to those facts.

Ground 8: Counsel ineffective for failing to investigate the medical evidence and also procure an independent medical expert to rebutt State's medical examiner's opinion that Petitioner had the requisite state of mind of intent based on the injuries inflicted when the most severe injuries were not from the initial assault but from an incident that occurred on the highway. (Having done

would have permitted the jury to access Petitioners guilt of Assault Second Degree, 11 Del. C. § 612(a)(1)(2): "The person [] intentionally causes serious physical injury to another person; or The person [] intentionally causes physical injury to another by means of a deadly weapon...")

GROUND 9: "Allowable evidence insufficient to establish guilt beyond a reasonable doubt to the "causation" element and/or "intent" element of intentional first degree murder to support Petitioners conviction under 11 Del C § 636(a)(1), when injury infliction causation was not segregated from automobile injuries that are not relevant to petitioner circumstances as he believed them to be at the specific time of alleged intent under 11 Del C § 531."

These issues facts were "passed over" by counsel and Court during appellant review. Totter v. Henderson 411 U.S. 258, 266-67 (1973) (Counsel's failure to properly evaluate facts); Flamer v Chaffinch 827 F. Supp. , 1100 (D.Del.) (State highest Court need only have sufficient facts in the record) These grounds issues relate directly to Petitioners grounds 5 and 6.

FACTUAL SUPPORT FOR THESE CLAIMS: See. T.Tr. of Jan. 14, 2004. Testimony of expert witness Pakesh Patel M.D. pgs. 82-107; and, Theresa Bare pgs. 108-172. First, Dr. Patel made no distinction between the specific damage caused only by the stab wounds, and those injuries being ran completely over by a large commercial van wheel which injuries were not legally part of the States case on intent. This doctors opinion was not challenged via adversarially by an independant expert defense witness to rebut both "causation"

and the probable location of stab wounds that were in fact stab wounds and the absence of major organ damage likely to cause death from only those stab wounds in isolation. This evidence under the circumstances "Petitioner believed them to be would have shown lack of ~~the~~ specific intent to kill, based on criminal standard of proof beyond a reasonable doubt.

Testimony of victim Bare pg 108-172. Specifically the following:

pg. 109: The point Petitioner emphasizes is the is no testimony where Petitioner actually verbalized "I AM going to kill you". The phrases used by victim are "paraphrases" of victims thoughts what she thought Petitioner was going to do - Not what Petitioner actually said.

See e.g.: pg. 29: "today is the day you are going to die if you get up";

pgs 130-131: No specific verbalized specific intent to kill, it is conditioned on it "victim didn't do Petitioners request"; pg. 131-133: victim testifies being stabbed in stomach (not in chest or throat cut) and Petitioner let her go to the kitchen; pg. 134: again conditioned on "it"; pgs.

134-138: The phrases "he kept telling me he was going to kill me" are "paraphrases" of this victim because "[she] knew" the "same way he was doing me."; pgs. 140-141: Again this is what the victim thought, NOT Petitioner. It is what was in the mind of the Petitioner that is at issue; i.e; The same way I felt had felt, I am going to die".

See also: pgs 153-160 (cross-examination on ~~specific~~ lack of specific intent to kill under the circumstances, Petitioner believed them to be)

Because the injuries played a significant factor in this trial, the Constitution requires that the State provide access to an expert

witness assistance and that Court appointed defense counsel meet with an adversarial challenge to the issue of "causation" as an element relied on by the State in its case-in-chief, at a particular time during an offense when it is seriously a question of fact. Particularly when no testimony was offered about Petitioner's mental state at the time of this specific offence under title 11 Del.C § 531 and 11 Del C § 636 (a)(1). Petitioner did not have a fair opportunity to present an adequate defense. AKC v OKLAHOMA 470 US 68 (1985). There was no ~~tactical~~ advantage in not investigating the medical evidence or hiring a professional to clarify which injuries were caused by the stabbing. See: States Closing T.O.R. Jan. 15, 2008 pg. 20 "after you discuss kidnapping charge with the question of intent to kill." At the specific time during which the alleged specific conscious object or purpose to specifically intentionally kill victim had occurred. Particularly, there was never evidence that Petitioner made a statement "I AM going to kill you!". Logically a threat based on a condition does not logically fall under "the circumstances [Petitioner] believed them to be [that] constitutes a substantial step in the course of conduct "planned" to culminate the commission of [specific intention] murder in the First Degree..." thus does not meet the requisite standard of intent beyond a reasonable doubt particularly ~~with~~ when combined with the lack of "causation" element. These issues relate to the facts raised in the Appeals in State Court. Wherefore, Petitioner respectfully prays this Court grant him leave to amend Petition by adding Grounds 8 and 9.

Respectfully Submitted,

Glen Dulote - Petitioner

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Attorney General for State
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Respondents.

Civ. A. No. 07-374-GMS.

ORDER

The Petitioner's Motion to Amend Petition to Add Grounds 8
and 9 has been read and considered.

IT IS ORDERED that this Motion to Amend is Granted

this _____ day of _____ 2008.

United States District Judge

Certificate of Service

I, Glenn W. Dickey, hereby certify that I have served a true and correct cop(ies) of the attached: Notice to Plaintiff

Glenn W. Dickey
parties/person (s):

TO: US District Court
Lock Box 18
1 Caleb Boggs
Federal Building
Wilmington Del 19801

TO: _____

TO: _____

Mr. Kevin J. Carroll
TO: DEP Prisoner Lawyer
844 King Street
Wilmington Del 19801

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this _____ day of _____, 2008

IM 200611 22
SBI# 200611 UNIT 22
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19976

WILMINGTON DE 197
10 APR 2008 PM 3:30
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